

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:NED:BOS:TL-N-2138-00
BJLaterman

date:

to: Area Director, Area 1, Territory Manager, Stoneham MA
Attr: Ted Jones, Team Manager

from: Associate Area Counsel, LMSB, Boston

subject:

Forms 872, 977 and 2045
U.I.L. 6501.08-21
Taxable Year Ended

This is in response to your memorandum requesting advice regarding the validity of a statute extension secured for the consolidated return for the taxable year ended

The examination of the consolidated return for the taxable years ended December 31, and commenced in . At the opening meeting with the taxpayer on , the need for statute extensions was discussed inasmuch as the statutes for the taxable year and the taxable year were due to expire on and , respectively. On , consents (i.e., Forms 872, 977 and 2045) were solicited from the taxpayer for the taxable year and the taxable year ended . On , the taxpayer signed the Forms 872 and 2045 and on the Form 977.

Inasmuch as was acquired by on and was acquired by on , Exam requested District Counsel advice regarding the solicitation of the consents. Prior to Exam's solicitation of the consents, the Team Coordinator, the Case Manager and Special Litigation Assistant Barry Laterman all conversed with the taxpayer's representatives. The conversations related to the necessity of Transferee Forms, the date to which the statute would be extended and the proper entity from whom they should be solicited. The Case Manager spoke with , Manager of Audits, Corporate Tax, and , Vice-President

and Director of Corporate Tax. [REDACTED] is the person who executed the consents. Messrs. [REDACTED], [REDACTED] and the Case Manager discussed the date to which the statutes would be extended. Exam originally wanted to extend to [REDACTED] and the parties after negotiations agreed that extensions to [REDACTED] would be sufficient.

Prior to the execution of the Forms 872, 977 and 2045, Exam did not mail a copy of Letter 907 or provide a copy of Publication 1035 and did not relate I.R.C. § 6501(c)(4)(B) rights. On March 16, 2000 and March 20, 2000, Exam received directives stressing the importance of providing the taxpayer with either Letter 907 or Publication 1035 or otherwise advising of the right to refuse to sign consents in compliance with I.R.C. § 6501(c)(4)(B). Exam, pursuant to Counsel advice, re-solicited Forms 872, 977 and 2045 for the [REDACTED] taxable year after advising the taxpayers both orally and in writing of their I.R.C. § 6501(c)(4)(B) rights. It was not possible to re-solicit for the taxable year ended [REDACTED] since the original [REDACTED] statute had already expired. You have requested our views regarding the validity of the [REDACTED] extension for the taxable year ended [REDACTED].

I.R.C. § 6501(c)(4)(B) was added to the Code by section 3461(b) of the I.R.S. Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685 (RRA 98). I.R.C. § 6501(c)(4)(B) provides that the Service shall notify the taxpayer of their right to refuse to extend the period of limitations for assessment, or to limit such extension to particular issues or to a particular period of time, on EACH OCCASION when the taxpayer is requested to provide an extension. The legislative history of this provision states that Congress believed that the taxpayers should be fully informed of their rights with respect to statute of limitations on assessment. Congress expressed concern that, in some cases, taxpayers were not fully aware of their rights to refuse to extend the statute of limitations, and have felt that they had no choice, but to agree to extend the statute of limitations upon the request of the Service. See H.R. Conf. Rep. No. 105-599 at 286 (1998). I.R.C. § 6501(c)(4)(B) applies to each request to extend the period of limitations for assessment made after December 31, 1999.

The Service must satisfy the requirements of I.R.C. § 6501(c)(4)(B) by advising the taxpayers of the rights set forth in I.R.C. § 6501(c)(4)(B). Congress intended that the Service follow I.R.C. § 6501(c)(4)(B) when soliciting consents to extend the period of limitations. Here, the taxpayers were not advised of I.R.C. § 6501(c)(4)(B) when the consents that were later executed were requested. The facts are that Exam did not advise

the responsible persons or their representatives of their I.R.C. § 6501(c)(4)(B) rights either orally or in writing, or by providing the taxpayer with a copy of Publication 1035, Extending the Tax Assessment Period.

Thus, the issue then becomes whether the responsible persons were aware of the right to refuse to extend the period of limitations or to limit the extension to particular issues or time periods. In other words, has the legislative purpose behind I.R.C. § 6501(c)(4)(B) been fulfilled. Based on the facts provided, it appears the responsible persons were aware of their rights with respect to extending the period of limitations. First, the responsible persons declined to execute the Forms with a statute extension date of [REDACTED]. Second, the responsible persons agreed to execute Forms on the condition that they expire on [REDACTED], rather than on [REDACTED], as originally proposed. Therefore, we believe the responsible persons were aware that the responsible persons had a choice in agreeing to execute a consent to extend the period of limitations for assessment or to limit the consent to a particular time period. Accordingly, we believe the legislative purposes of I.R.C. § 6501(c)(4)(B) have been fulfilled because the actions of the responsible persons reflect an understanding of their rights under I.R.C. § 6501(c)(4)(B). See S. Rep. No. 105-174 at 100 (1998); H.R. Conf. Rep. No. 105-599 at 286 (1998). Since we believe the legislative purposes have been fulfilled, we believe the Service can defend the extensions if challenged by the responsible persons.

In summary, we conclude that although I.R.C. § 6501(c)(4)(B) was not complied with, the legislative purpose of I.R.C. § 6501(c)(4)(B) was fulfilled and, therefore, the extensions are valid. If any further assistance is required, the undersigned who can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant